IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Crl.MC.No. 2610 of 2007()

CRRP.32/2005 of SESSIONS COURT, KALPETTA
MC.44/2003 of CHIEF JUDICIAL MAGISTRATE, KALPETTA

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PETITIONER: PETITIONER/COUNTER PETITIONER

ABDUL GAFOOR,
S/O. MOIDEEN, AGED 37 YEARS,
THANIKATTUKUNNUVEEDU,
KRISHNAGIRI.P.O., KRISHNAGIRI VILLAGE,ATHINILAM,
S.BATHERY TALUK,WAYANAD.

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENTS: PETITIONERS & STATE

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1. K.H.SULAIKHA,
D/O. LATE HAMZA, KOLLATTUPARAMBU HOUSE,
RUBBERKUNNU, KAMBALAKADU P.O,
VYTHIRI TALUK,WAYANAD.

2. THE STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2610 of 2007

Dated this the 16th day of August, 2007

O R D E R

The petitioner has suffered a direction under Section 3 of the Muslim Women's (Protection of Rights on Divorce) Act. He was initially directed by the learned Magistrate to pay an amount of Rs.1,58,215/- to the claimant. The learned Sessions Judge in revision partly modified the direction. The present direction to the petitioner is to pay an amount of Rs.1,11,250/-. The petitioner claims to be aggrieved by that revised direction. A second revision petition is not legally maintainable in view of the bar under Section 397(3) Cr.P.C and that explains why the petitioner is attempting to gain access into this Court through the door of Section 482 Cr.P.C.

2. A finding of fact was entered that 15 sovereigns of gold ornaments belonging to the divorced wife were in the hands of the petitioner and he had made use of the same. The learned Magistrate directed payment of an amount of Rs.45,000/- (15 X 3000). The learned Sessions Judge found this quantification of the value of one sovereign to be oppressive. The learned Sessions Judge hence directed that at least an amount of Rs.4,000/- must have been reckoned as the value of one sovereign of gold. Accordingly the

learned Sessions Judge directed payment of Rs.60,000/- (15 X Rs.4000). The first contention of the petitioner is that in the absence of any challenge by the claimant wife, the learned Sessions Judge has erred in this upward modification of the price of 15 sovereigns of gold ornaments.

3. The learned Magistrate had directed payment of an amount of Rs.1,08,000/- (15 X 12 X 600) as the quantum of amount payable as fair and reasonable provisions and maintenance to the divorced wife. The learned Sessions Judge took the view that accepting the multiplier as 15 was not proper and that reckoning 5 as the multiplier would be perfectly reasonable. Accordingly the learned Sessions Judge reduced such amount payable and directed payment of an amount of Rs.45,000/- (750 X 12 X 5) as fair and reasonable provision and maintenance to the divorced wife. In as much as there was upward modification of the price of one sovereign of gold, the petitioner did not get the entire advantage of the downward reduction of the amount fixed as fair and reasonable provision.

4. The petitioner in this Crl.M.C complains about that upward modification only. Of course, the counsel attempts to advance an argument that there was no sufficient evidence to conclude that 15 sovereigns of gold ornaments were available with the petitioner or that the petitioner had made use of the same.

4. I must alertly be conscious of the nature, quality and contours of the jurisdiction of this Court under Section 482 Cr.P.C. Any and every error committed by subordinate courts in law or on facts cannot ip so fact persuade this Court to invoke the extraordinary inherent jurisdiction under Section 482 Cr.P.C. Has justice failed ? Is there miscarriage of justice ? Is there abuse of process of the Court ? These are the crucial questions that this Court will have to consider when invited to invoke the powers under Section 482 Cr.P.C.

5. Both the courts have come to the conclusion that the oral evidence of PW1 on the question that 15 sovereigns of gold ornaments were handed over and were used by the petitioner can be accepted. Absolutely nothing has been shown to exist for this Court to invoke the powers under Section 482 Cr.P.C to interfere with that concurrent finding. The gold ornaments have to be returned. That has to be done at the time of divorce or thereafter under Section 3 of the Muslim Women's (Protection of Rights on Divorce) Act. If that obligation is not discharged, the divorced wife must be adequately compensated. While calculating price of the gold, fairness and reasonableness demands that it must be computed as on the date on which the liability to return arises. It would be puerile to assume that the value as on the date of the marriage or on the date of handing over of the ornaments will have to be reckoned as crucial. In these circumstances I am of the

opinion that the courts below have committed no error in coming to the conclusion that 15 sovereigns of the gold ornaments are with the petitioner. The learned Sessions Judge has committed no error in coming to the conclusion that Rs.4000/- per sovereign can be reckoned safely as the value. Going by the current rates even that does appear to me to be grossly inadequate. In the absence of challenge from the claimant it is not necessary to go into that question in detail.

6. In any view of the matter, I am of the opinion that interference with the impugned order by invoking the powers under Section 482 Cr.P.C at the instance of the petitioner is totally unnecessary.

7. This Crl.M.C is, in these circumstances, dismissed.

(R.BASANT, JUDGE)

rtr/-